

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Fynale Barnwell and Shavell Barnwell,
Individually, and as natural parents and
Guardians of, M.B., a Minor Child,

Plaintiffs,

v.

Lexington School District One,
NICOLE LIVINGSTON, in her individual
Capacity, and JACOB SMITH, in his
Individual Capacity,

Defendants.

C/A No.: 3:23-cv-583-SAL

PETITION FOR
APPROVAL OF MINOR SETTLEMENT

Fynale Barnwell and Shavell Barnwell, as the natural parents and guardians of M.B., a minor, by and through their undersigned counsel, would respectfully move the Court for an Order approving the minor settlement reached in connection with this matter as set forth below:

I.

Fynale Barnwell and Shavell Barnwell are the natural parents and guardians of M.B., a minor.

II.

On, or about November 29, 2022, M.B., was walking in a hallway of River Bluff High when the pledge of allegiance played over the school intercom system. Other students were also present and walking in the hallway. M.B., continued to walk silently while the pledge played. She did not disrupt or come into contact with any other student. As M.B., was silently walking, Defendant Livingston yelled and demanded that M.B., stop and physically stopped her movement. Defendant Livingston actively punished M.B. for refraining from saying the pledge in an attempt

to force her to comply or otherwise chill M.B.'s silent act of lawful protest. M.B., was the only African American student in the immediate vicinity. Students of other races were present in the hallway and also not participating in reciting the pledge, but M.B. was the only student stopped by Defendant Livingston. Defendant Livingston then escorted M.B. to the office of Defendant Smith, the principal of River Bluff High School. Defendant Smith questioned M.B. about her patriotism, asking her if she loved her country. Defendant Smith effectively held M.B. in his office, pressuring her to abandon her silent objection to the pledge, efforts that both punished M.B.'s lawful exercise of her constitutional rights and served to chill her future actions.

III.

Following this incident, Plaintiffs alleged several violations of M.B.'s constitutionally protected rights in this matter against Defendants Lexington School District One, Nicole Livingston, and Jacob Smith and made claims for injuries and damages she sustained as a result of the incident. These violations included, the violation of her Fourth Amendment rights, as a result of Defendant Livingston physically assaulting and restraining M.B. Violation of M.B.'s Fourteenth Amendment rights, in choosing to only punish M.B. for protesting the pledge and allow white students to do so without interference. Violation of M.B.'s First Amendment rights, as a result of Defendant Livingston interfering with M.B.'s First Amendment right to silently protest the pledge, and in both Defendants Livingston and Smith retaliating against M.B. for her attempted lawful protest by keeping M.B. in Smith's office, subjecting her to questioning, and keeping her from returning to class in a timely manner. All of which have been denied by Defendants.

IV.

An extensive investigation has been made of the facts and circumstances surrounding the November 29, 2022, incident and the resulting damages to Plaintiff M.B. Further, Plaintiffs Fynale Barnwell and Shavell Barnwell have been fully advised of their and responsibilities as legal Guardians of M.B. On December 9, 2024, the parties participated in a mediation of this matter and reached a settlement that was reduced to writing and signed by all parties and their Counsel. Accordingly, there has been sought and obtained from the Defendants an offer of settlement whereby the Defendants have agreed to pay a total sum of SEVENTY-FIVE THOUSAND and 0/100 (\$75,000.00) DOLLARS in full and final settlement of any and all claims which Plaintiffs may have arising out of this incident.

V.

Out of the total settlement, it is proposed that the following be paid:

- a. FORTY-SIX THOUSAND, NINE-HUNDRED, SEVENTY-NINE AND 90/100 (\$46,979.90) DOLLARS to M.B., for the benefit of the minor plaintiff will be held in a blocked account titled in the name of M.B. only. Withdrawal prior to the age of eighteen (18) is prohibited unless ordered by this court, thus negating the need for a surety bond. Once the minor plaintiff reaches the age of 18, she will be the sole account holder. The court will no longer have control over the account. In the event of the death of the minor plaintiff, the account shall be distributed pursuant to the applicable intestacy laws. All such aforementioned sums constitute damages on account of personal injury within the meaning of IRC §104(a)(2) for her claims in this matter;

- b. THREE-THOUSAND, TWENTY AND 13/100 (\$3,020.15) DOLLARS in Costs to Bailey Law Firm, L.L.C., in accordance with Plaintiffs employment contract with said law firm; and
- c. TWENTY-FOUR THOUSAND, NINE-HUNDRED, NINETY-NINE AND 97/100 (\$24,999.97) DOLLARS to Bailey Law Firm, L.L.C., in attorneys' fees in accordance with Plaintiffs employment contract with said law firm.

In consideration of the payments set forth above, all Plaintiffs will execute a full and final release for any and all claims they have against the remaining Defendants in this matter for any and all claims for damages, medical treatment, costs, and expenses whether for conditions which are known or unknown at this time.

VI.

Fynale Barnwell and Shavell Barnwell, individually, and as natural parents and guardians of M.B., have fully and carefully considered the aforesaid settlement offer made as Guardians for M.B., and have been advised by their undersigned counsel as to the reasonableness of the settlement. Plaintiffs Fynale Barnwell and Shavell Barnwell are of the opinion that under the circumstances, this offer of settlement is reasonable and proper and in the best interests of their daughter and adequately protects her interests. They are further of the opinion that the disbursement of the proceeds of the settlement, as set forth above, is fair and equitable and in their daughter's best interest and in accordance with their employment contract with the undersigned Counsel.

VII.

Upon approval by the Court of the proposed settlement in this action, Fynale Barnwell and Shavell Barnwell, as Guardian of the minor, M.B., prays that they be authorized to execute a release prepared on behalf of Defendants in favor of M.B., heirs, executors, administrators, personal representatives, successors, and assigns.

WHEREFORE, the undersigned prays:

1. That this court approve, in accordance with South Carolina Code Annotated § 62-5-433(B), the aforesaid settlement and authorize Plaintiffs to consummate the settlement and to execute the proper receipts and releases for all sums to be paid hereunder;
2. That this Court authorize and direct the Defendants to pay or have paid on their behalf as set forth herein, the total settlement proceeds of Seventy-Five Thousand and 0/100 (\$75,000.00) Dollars in settlement of any and all claims Plaintiffs might have arising out of the aforesaid incident.
3. That this Court authorize the Petitioner to disburse the proceeds of the settlement as set forth more completely above, in accordance with her verified Petition.
4. For any such other and further relief as this Court shall deem necessary.

Respectfully submitted,

s/Tyler D. Bailey
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